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No. \_\_\_\_\_

Supreme Court, U.S.  
FILED

DEC 18 1986

JOSEPH F. SPANIOL, JR.  
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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1986

ROYAL NETHERLANDS STEAMSHIP COMPANY,

*Petitioner,*

—against—

ELIDA QUINTO de GARCIA,

*Respondent.*

**PETITION FOR A WRIT OF CERTIORARI TO THE  
FLORIDA THIRD DISTRICT COURT OF APPEAL**

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**Question Presented**

Is there a remedy under United States general maritime law for tortious deaths in foreign territorial waters?

### **Parties**

The caption of this petition contains the names of all parties to the proceedings in the lower courts.

The caption, as do those in the lower courts, identifies petitioner Royal Netherlands Steamship Company by the English translation of its Dutch name, Koninklijke Nederlandsche Stoomboot Maatschappij BV.

Petitioner is a wholly owned subsidiary of Koninklijke Nedlloyd Groep NV.

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1986

No. \_\_\_\_\_

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ROYAL NETHERLANDS STEAMSHIP COMPANY,

*Petitioner,*

—against—

ELIDA QUINTO de GARCIA,

*Respondent.*

---

**PETITION FOR A WRIT OF CERTIORARI TO THE  
FLORIDA THIRD DISTRICT COURT OF APPEAL**

---

**Opinion Below**

The opinion of the Florida Third District Court of Appeal dated May 20, 1986 (1a) is reported at 489 So. 2d 128.

**Jurisdiction**

The opinion of the Florida Third District Court of Appeal dated May 20, 1986 (1a) was entered as a judgment on May 20, 1986.

The order of the Supreme Court of Florida dated September 25, 1986 (31a) declining to exercise discretionary jurisdiction to review the decision of the Florida Third District Court of Appeal, was entered as a judgment on September 25, 1986.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

### **Constitutional Provision, Statutes, and Rule Involved**

"The judicial Power shall extend \* \* \* to all Cases of admiralty and maritime Jurisdiction \* \* \* ." U.S. Const. Art. III, § 2.

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"The district courts shall have original jurisdiction, exclusive of the courts of the States, of:

(a) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled." 28 U.S.C. § 1333(1).

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"Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, the personal representative of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child, or dependent relative against the vessel, person, or corporation which would have been liable if death had not ensued." 46 U.S.C. § 761.

"Suit shall be begun within two years from the date of such wrongful act, neglect, or default, unless during that period there has not been reasonable opportunity for securing jurisdiction of the vessel, person, or corporation to be charged; but after the expiration of such period of two years the right of action hereby given shall not be deemed to have lapsed until ninety days after a reasonable opportunity to secure jurisdiction has offered." 46 U.S.C. § 763.

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"The action for seeking reparation for damages or injuries to which this title refers prescribes in one year counting from the date on which the damages occurred, or on which the offended had knowledge of the damage or injury, and who caused it." Guatamala Civil Code § 1673 [translation].

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" \* \* \* The defense of lack of jurisdiction of the subject matter may be raised at any time." Fla.R.Civ.P. 1.140 (h)(2).

### Statement

More than 3 years after her Guatemalan son fell to his death from a Dutch ship in a Guatemalan port, the Guatemalan respondent sued the Dutch shipowner petitioner in the Florida Eleventh Judicial Circuit Court for wrongful death damages solely under United States general maritime law (2a, 6a, 8a, 10a).

Throughout the litigation petitioner has contended as a matter of law that because the death occurred in Guatemalan waters, the Guatemalan respondent cannot recover from the Dutch petitioner under United States general maritime law.

Petitioner initially raised this defense of lack of subject matter jurisdiction<sup>1</sup> by a pre-answer motion to dismiss (R 6-8; 12a), which was denied (R 134; 14a). Petitioner then pleaded the defense in its answer to respondent's complaint (R163-165; 17a, 18a). The trial judge deferred petitioner's directed verdict motions until the close of all the evidence (Tr. 450, 675-676), when petitioner again moved to dismiss for lack of subject matter jurisdiction (Tr. 721-722) and the trial judge reserved decision (Tr. 725). Petitioner iterated the defense in its post-trial motion for judgment in its favor (R 853-859; 20a), which was denied (R 951-953; 27a).

Petitioner appealed the judgment for respondent and the order denying petitioner's post-trial motions to the Florida Third District Court of Appeal (R 943; 29a), which dismissed the defense of lack of subject matter jurisdiction on the ground that as the Florida Circuit Court had jurisdiction under the "saving to suitors" provision, 28 U.S.C. § 1333(1); *supra*, p. 2, " \* \* there was no fundamental difference between this suit

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<sup>1</sup> Under Florida law this defense "may be raised at any time", Fla.R.Civ.P. 1.140(h)(2); *supra*, p. 3, and " \* \* cannot be conferred by agreement of the parties nor by the error, inadvertence, action or inaction of the parties. A judgment rendered in an action in which the court lacks jurisdiction of the subject matter is void." [footnote citations omitted]. Trawick, Fla. Prac. & Proc. § 3-3, p. 20 (1985).

and any other tort action in a circuit court in Florida. \* \* 'General maritime law has usually adopted and followed the principles of general tort law.' " (4a). The Court of Appeal further presumed that " \* \* Guatemalan or Dutch maritime law would not differ in any material respect from U.S. general maritime law since modern maritime law is comprised of the ancient codes and customs of seafaring nations." (4a).<sup>2</sup>

The Supreme Court of Florida denied petitioner discretionary review of the Court of Appeal's decision (31a).

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<sup>2</sup> Even if that presumption were correct, respondent did not seek to recover under Guatemalan law, which prescribed the suit, Civil Code § 1673; *supra*, p. 3, or Dutch law, which would apply the law of Guatemala. *Young v. KLM Airlines*, HR 1 May 1936, NJ 1936, 956; *KPM Shipping Co. v. The Liverpool & London & Globe Ins. Co.*, HR 10 Jan. 1941, NJ 1941, 824.

### Reasons for Granting the Writ

Certiorari was granted in *Moragne v. States Marine Lines*, 398 U.S. 375 (1970), “ \* \* to reconsider the important question of remedies under federal maritime law for tortious deaths on state territorial waters.” *Ib.*, p. 377. In “ \* \* the performance of the Court’s function in declaring the general maritime law \* \* .”, *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 630 (1959), the Court has not yet decided the important question presented by petitioner of whether there is a remedy under that law for tortious deaths in foreign territorial waters.

*Cormier v. Williams/Sedco/Horn Constructors*, 460 F. Supp. 1010 (E.D. La. 1978), dismissed a general maritime law claim for wrongful death in Peruvian waters on the premise that “high seas” in the Death on the High Seas Act [DOHSA], 46 U.S.C. § 761; *supra*, p. 2, “ \* \* includes all waters beyond three miles from the shores of a state [of the United States].”, *ib.*, p. 1011, and: “As the Supreme Court held in the [*Mobil Oil Corp. v.*] *Higginbotham* case [436 U.S. 618 (1978)], the *Moragne* [v. *States Marine Lines*, *supra*, general maritime law] wrongful death remedy will not apply when the Death on the High Seas Act covers an incident.” *Ib.*, p. 1012.<sup>3</sup>

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3. The Court has explained that the meaning of “high seas” \* \* “will depend upon the context, or circumstances attending its use,” *United States v. Rodgers*, 150 U.S. 249, 256 (1893), holding that the Great Lakes are “high seas.” *Cf. United States v. Louisiana*, 394 U.S. 11, 23 (1969), “high seas \* \* are international waters not subject to the dominion of any single nation”; *United States v. Flores*, 289 U.S. 137 (1933), waters subject to Belgian sovereignty are “high seas.” Most recently, the Court said DOHSA covers “maritime deaths occurring beyond state territorial waters \* \* more than three miles from shore.” *Offshore Logistics, Inc. v. Tallentire*, \_\_\_\_ U.S. \_\_\_\_, 106 S.Ct. 2485, 2491 (1986).

In accord is *Allan v. Brown & Root, Inc.*, 491 F. Supp. 398 (S.D. Tex. 1980), dismissing a general maritime law claim for wrongful death in Dutch waters because “ \* \* under the general maritime law there is no cause of action for wrongful death upon foreign waters in the Courts of the United States.”, *ib.*, p. 401, citing *Mobil Oil Corp. v. Higginbotham*, *supra*, which negatively answered the “ \* \* question [of] whether, in addition to the damages authorized by federal statute [DOHSA], a decedent’s survivors may also recover damages under general maritime law.” 436 U.S., p. 618.

*Sanchez v. Loffland Bros. Co.*, 626 F. 2d 1228, 1230 (5 Cir. 1980), reh. en banc den. 636 F. 2d 315, cert. den. 452 U.S. 962 (1981), held that a general maritime law claim for wrongful death in Venezuelan waters was directly time barred by the 2 year DOHSA limitation, 46 U.S.C. § 763; *supra*, p. 2, contrasting *Public Administrator v. Angela Compania Naviera, S.A.*, 592 F. 2d 58, 63-64 (2 Cir.), cert. dismissed 443 U.S. 928 (1979), holding that a general maritime law claim for wrongful death outside U.S. territorial waters was subject to dismissal for laches measured by the DOHSA 2 year limitation. Both cases affirmatively decided by implication the question remanded in *Renner v. Rockwell Int’l Corp.*, 587 F. 2d 1030, 1031 (9 Cir. 1978), of whether there can be both DOHSA and general maritime law remedies for the same tortious death.

The Florida Court of Appeal’s decision below adds to the body of confused, conflicting lower court opinions on the important question of federal law which has not been, but should be, settled by this Court in executing its “ \* \* responsibility for fashioning the controlling rules of admiralty law.” *Fitzgerald v. United States Lines*, 374 U.S. 16, 20 (1963). That the rights of the Dutch petitioner and Guatemalan respondent rest upon the ultimately dispositive answer makes the question presented all the more important because it necessitates “ \* \* accommodating the reach of our own laws to those of other

maritime nations." *Lauritzen v. Larsen*, 345 U.S. 571, 577 (1953).

Respectfully submitted,

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December 18, 1986



## **APPENDIX**



**OPINION**

**IN THE DISTRICT COURT OF APPEAL OF FLORIDA  
THIRD DISTRICT**

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January Term, A.D. 1986

Case No. 84-835

Opinion filed May 20, 1986

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ROYAL NETHERLANDS STEAMSHIP COMPANY,

*Appellant,*

—vs.—

ELIDA QUINTO de GARCIA, as Mother and Personal Representative of Carlos Enrique Dominguez Quinto, deceased,  
*Appellee.*

---

An Appeal from the Circuit Court for Dade County, Richard S. Fuller, Judge.

Mitchell, Harris, Canning, Murray & Usich and C. Robert Murray, Jr., for appellant.

Horton, Perse & Ginsberg and Arnold R. Ginsberg; Huggett & Martucci, for appellee.

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**B e f o r e :**

HENDRY, NESBITT and DANIEL S. PEARSON, JJ.

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HENDRY, *Judge*.

Defendant Royal Netherlands Steamship Company appeals from a final judgment entered after a jury trial in this wrongful death action. We affirm.

Plaintiff's decedent, a ship painter by trade, was killed in a fall from one of appellant's ships while it was docked in a Guatemalan port. Plaintiff, decedent (her son) and decedent's two minor sons were Guatemalan nationals. Defendant was a Dutch corporation and the ship was of Dutch registry.

Plaintiff filed suit in the Eleventh Judicial Circuit Court of Florida seeking damages under United States general maritime law for unseaworthiness and negligence. Defendant moved to dismiss the complaint for lack of personal and subject matter jurisdiction.<sup>1</sup> The trial court ordered that initial discovery would be limited to jurisdictional questions only. Defendant failed to comply with this and several other orders of the trial court directing defendant to provide information pertinent to the issue of personal jurisdiction. After a hearing on plaintiff's motion for default, the trial court denied defendant's motion to dismiss, imposed personal jurisdiction as a sanction for the discovery violations and ordered defendant to file its answer. An appeal to this court was dismissed without opinion.

The cause was tried before a jury which returned a verdict in favor of plaintiff for \$2,000,000 (\$1,000,000 to the decedent's estate and \$1,000,000 to the survivors), to be reduced by decedent's 50% comparative negligence. On defendant's motion to correct the verdict, the trial court struck the award of \$1,000,000 to the estate, finding that the jury had confused the award to the estate and the award to the survivors. The \$1,000,000 award to the survivors remained intact. All of defendant's other post-trial motions were denied.

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<sup>1</sup> The complaint alleged that the Dutch corporation had substantial contacts with both the State of Florida and the United States. Defendant admitted that it had an office in Miami and an agent in New York. All other jurisdictional facts were contested and were the subject of the trial court's discovery orders.

Defendant raises numerous points on appeal, challenging the trial court's orders on personal jurisdiction and subject matter jurisdiction and alleging error in the amount of the award to the estate. Defendant argues further that no award may be made to a decedent's estate under the general maritime law. We dispose of these issues on the following briefly stated analysis.

Defendant asserts that there isn't sufficient "connexity" between the events in Guatemala and Miami, Florida to allow a Florida circuit court to have personal jurisdiction over the parties. Given the facts of this case, defendant's point might be well taken but for the fact that personal jurisdiction was imposed by the trial court as a sanction for its repeated discovery violations. This particular sanction has been approved by the United States Supreme Court in *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinea*, 456 U.S. 694, 102 S.Ct. 2099, 72 L.Ed.2d 492 (1982). The Court added the proviso that any sanction must be "just" and that the sanction must be specifically related to the particular "claim" which was at issue in the order to provide discovery. *Id.* at 456 U.S. 707, 102 S.Ct. 2107, 72 L.Ed.2d 504. In the case at bar, all of the facts necessary to prove or disprove minimum contacts with the State of Florida were within defendant's control. Discovery, at that stage of the proceeding, related solely to the personal jurisdiction issue. Without defendant's cooperation in the discovery process, the case could not go forward. Thus, when defendant repeatedly refused to provide the requested information, the trial court elected to impose an appropriate sanction.

The second issue raised and argued strenuously by defendant is that the trial court did not have subject matter jurisdiction over the claim. This assertion is without merit. Plaintiff filed this action under 28 U.S.C. § 1333, which permits plaintiff to bring her suit, even though it sounds in maritime law, in state court.<sup>2</sup> *Rubin v. Brutus Corp.*, 11 F.L.W. 903 (Fla. 1st DCA

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2 28 U.S.C. § 1333 states, in relevant part:

The district courts shall have original jurisdiction, exclusive of the courts of the States, of:

(footnote continued on following page)

Apr. 15, 1986). Thus, once the trial court had personal jurisdiction over the parties, there was no fundamental difference between this suit and any other tort action in a circuit court in Florida.<sup>3</sup> See *id.* at 904 ("General maritime law has usually adopted and followed the principles of general tort law.")<sup>4</sup>

The cases cited by defendant regarding "subject matter jurisdiction" in fact raised choice of law considerations. While there were several instances during the proceedings below where defendant indicated that Guatemalan or Dutch law, rather than U.S. general maritime law, might apply, the issue was never formally presented to the trial court. Presumably, Guatemalan or Dutch maritime law would not differ in any material respect from U.S. general maritime law since modern maritime law is comprised of the ancient codes and customs of seafaring nations. See generally, 1 M. Norris, *The Law of Seamen* § 1:3 (4th ed. 1985). In any event, the failure to raise the issue properly below precludes our consideration of it here. *Ganem v. Ganem*, 269 So.2d 740 (Fla. 3d DCA 1972), *cert. denied*, 277 So.2d 284 (Fla. 1973); *Leary v. Gledhill*, 8 N.J. 260, 84 A.2d 725 (1951).

Defendant's final issue on appeal concerns whether the estate can be awarded damages under U.S. general maritime

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(1) any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

3 The cases cited by defendant for the proposition that there was no subject matter jurisdiction in the circuit court were federal cases. Federal courts are courts of limited jurisdiction. The character of the controversies over which federal judicial authority may extend is delineated in Article III, section 2, clause 1, of the United States Constitution. Jurisdiction of the lower federal courts is further limited to those subjects encompassed within a statutory grant of jurisdiction. This reflects the constitutional source of federal judicial power. *Insurance Corp. of Ireland v. Compagnie des Bauxites*, 456 U.S. at 701, 102 S.Ct. at 2104, 72 L.Ed.2d at 500. State courts do not labor under such limitations.

4 Defendant did not raise the issue of *forum non conveniens* on appeal.

law. It argues that under *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 90 S.Ct. 1772, 26 L.Ed.2d 339 (1970), and its progeny, *Sea-Land Services, Inc. v. Gaudet*, 414 U.S. 573, 94 S.Ct. 806, 39 L.Ed.2d 9 (1973), and *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618, 98 S.Ct. 2010, 56 L.Ed.2d 581 (1978), only survivors can be awarded damages and the damages must be solely pecuniary in nature. We note that, at the moment, this argument is moot since the trial court vacated the award to the estate on the grounds of jury confusion. We further note that this argument was raised for the first time in a post-trial motion. The jury was instructed on estate damages without any objection by the defendant. Defendant's failure to bring this argument to the attention of the trial court places this issue outside the scope of our review.

We have carefully considered all other issues raised by defendant and find that they are without merit.

The final judgment is affirmed.

**COMPLAINT**

**IN THE CIRCUIT COURT  
OF THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR DADE COUNTY, FLORIDA**

**GENERAL JURISDICTION DIVISION**

**CASE No: 81-11487**

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ELIDA QUINTO de GARCIA, as Mother and Personal Representa-  
tive of CARLOS ENRIQUE DOMINGUEZ QUINTO, deceased,  
*Plaintiff,*

—vs.—

ROYAL NETHERLANDS STEAMSHIP COMPANY, CAROL LINE,  
CARIBBEAN OVERSEAS LINES, SS/HOLLANDIA, and WEST  
OF ENGLAND SHIP OWNERS MUTUAL INSURANCE ASSO-  
CIATION, LTD.,  
*Defendants.*

---

Plaintiff sues the Defendants and alleges that:

1. Plaintiff, ELIDA QUINTO de GARCIA, is the mother and Personal Representative of CARLOS ENRIQUE DOMINGUEZ QUINTO, deceased, and is sui juris and brings this action on behalf of herself and the children of the decedent, ESWIN OSWALDO DOMINGUEZ LOPEZ and MARLON ROEL DOMINGUEZ PAIZ, and all who are the former dependents of CARLOS ENRIQUE DOMINGUEZ QUINTO, deceased.

2. At all times material hereto, the decedent, CARLOS ENRIQUE DOMINGUEZ QUINTO, was a seaman on board the vessel SS/HOLLANDIA and this action is brought pursuant to the General Maritime Law.



3. The vessel SS/HOLLANDIA was a cargo vessel being used by its owners and operators for the transportation of personnel and freight for hire in navigable waters and which had a base of operations in Miami, Dade County, Florida.

4. The Defendants, ROYAL NETHERLANDS STEAMSHIP COMPANY, CAROL LINE, and CARIBBEAN OVERSEAS LINES, jointly, singularly, severally, and individually, owned, operated, chartered, controlled and acted as agent for the SS/HOLLANDIA at all times material hereto.

5. The vessel and its owners, both corporate and individual have substantial business contacts with the United States and more particularly are doing business in Miami, Dade County, Florida, have a base of operations in Miami, Dade County, Florida, conduct business in Miami and maintain offices in Miami, Dade County, Florida.

6. In particular, the Defendants, CARIBBEAN OVERSEAS LINES and CAROL LINE, maintain an office for business at 444 Brickell Avenue, Miami, Florida.

7. At all times material hereto, the flag and the registry of the SS/HOLLANDIA was illusory and the true owners, operators, controllers, and agents were the Defendants listed aforementioned who are United States citizens or who have substantial business contacts and a base of operations in the United States and more particularly in Miami, Dade County, Florida.

8. The WEST OF ENGLAND SHIP OWNERS MUTUAL INSURANCE ASSOCIATION, LTD., pursuant to a policy of liability insurance, insured the vessel, SS/HOLLANDIA and the other Defendants for liability insurance and the Plaintiff is a third party beneficiary to that policy of insurance and claims her rights thereunder.

9. The vessel and its owners are subject to the jurisdiction of this Honorable Court by virtue of having substantial business contacts with the United States and more particularly with Miami, Dade County, Florida, maintaining a base of opera-

tions in Miami, Dade County, Florida and operating out of and maintaining offices in Miami, Dade County, Florida.

### COUNT I

Plaintiff readopts and realleges all of the foregoing as if stated herein verbatim, and in addition alleges that:

10. On or about April 24th, 1978 while the vessel SS/HOLLANDIA was at Puerto Santo Tomas De Castilla, in Guatemala, the decedent, CARLOS ENRIQUE DOMINGUEZ QUINTO, was working as a seaman on the vessel SS/HOLLANDIA, and was performing his duties as a seaman during the loading and unloading process of the vessel SS/HOLLANDIA, while docked. Although the decedent, CARLOS ENRIQUE DOMINGUEZ QUINTO, had only been working as a seaman on board the SS/HOLLANDIA for two days, he was ordered on to the deck of the ship close to the edge to assist in the loading and unloading of the vessel while docked at the port at Puerto Santo Tomas De Castilla in Guatemala. During the loading and unloading of the vessel SS/HOLLANDIA, the vessel rolled excessively to the side and the decedent, CARLOS ENRIQUE DOMINGUEZ QUINTO, was thrust over the side of the vessel striking the side of the vessel and falling into the water ultimately resulting in his death.

11. The Defendants failed to provide the decedent with a seaworthy vessel and equipment and such unseaworthiness was a proximate cause of the death of the decedent.

WHEREFORE, the Plaintiff, ELIDA QUINTO de GARCIA, as Personal Representative on behalf of herself and the minor children of the decedent, sues the Defendants, SS/HOLLANDIA, ROYAL NETHERLANDS STEAMSHIP COMPANY, CAROL LINE, CARIBBEAN OVERSEAS LINES and WEST OF ENGLAND SHIP OWNERS MUTUAL INSURANCE ASSOCIATION, LTD., for unseaworthiness, pursuant to the General Maritime Law and demands compensatory damages in excess of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) and requests a trial by jury of all issues so triable.

## COUNT II

Plaintiff readopts and realleges all of the foregoing as if stated herein verbatim and in addition alleges that:

12. The Defendants were negligent or careless in one or more of the following acts of omission or commission:

- A. Failing to provide the decedent with a safe place to work;
- B. Failing to provide a safety net;
- C. Failing to have a safety line or attachment to the decedent's body;
- D. Failing to have a sufficient number of co-workers;
- E. Failing to have a guard railing around the edge of the vessel;
- F. Failing to have the vessel, SS/HOLLANDIA's equipment in satisfactory repair;
- G. Failing to warn the decedent of the dangerous and unsafe condition of working on board the deck of the vessel when there was no railing, no net, and no safety line;
- H. Failing to provide the decedent with adequate instructions and training with respect to the loading and unloading of the vessel;
- I. Requiring the decedent to perform extremely dangerous duties of loading and unloading on the deck of the vessel, SS/HOLLANDIA without any safety net or safety line or any training when the Defendants knew or should have known that such activities were extremely dangerous and knew or should have known that the decedent had no training in such matters and had only been a seaman on board the vessel for two days prior to his death;
- J. Failing to rescue the decedent when he fell over board the vessel, SS/HOLLANDIA and into the waters by the

vessel, SS/HOLLANDIA when docked at the Port of Santo Tomas De Castilla in Guatemala;

- K. Waiting for three (3) hours after the decedent, CARLOS ENRIQUE DOMINGUEZ QUINTO, had fallen over board the vessel, SS/HOLLANDIA and the Defendants knew or should have known that the decedent had been injured and fallen over board the vessel before initiating rescue attempts.

13. This Count is brought for wrongful death pursuant to the General Maritime Law.

WHEREFORE, the Plaintiff, ELIDA QUINTO de GARCIA, as Personal Representative on behalf of herself and the minor children of the decedent, CARLOS ENRIQUE DOMINGUEZ QUINTO, sues the Defendants, SS/HOLLANDIA, ROYAL NETHERLANDS STEAMSHIP COMPANY, CAROL LINE, CARIBBEAN OVERSEAS LINES, and WEST OF ENGLAND SHIP OWNERS MUTUAL INSURANCE ASSOCIATION, LTD., for wrongful death pursuant to the General Maritime Law and demands compensatory damages in excess of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) and requests a trial by jury of all issues so triable.

DATED: July 10th, 1981

LAW OFFICES OF WILLIAM HUGGETT  
*Attorneys for Plaintiff*

BY: JOSEPH C. MARTUCCI  
Joseph C. Martucci

**PRE-ANSWER MOTION TO DISMISS**

**IN THE CIRCUIT COURT  
OF THE 11TH JUDICIAL CIRCUIT  
IN AND FOR DADE COUNTY, FLORIDA**

**GENERAL JURISDICTION DIVISION**

**CASE NO. 81-11487-18**

---

ELIDA QUINTO de GARCIA, as Mother and Personal Representative of CARLOS ENRIQUE DOMINGUEZ QUINTO, deceased,  
*Plaintiff,*

—vs.—

ROYAL NETHERLANDS STEAMSHIP COMPANY, et al.,  
*Defendants.*

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COME NOW the Defendants, ROYAL NETHERLANDS STEAMSHIP COMPANY, and the SS/HOLLANDIA, by and through their undersigned attorneys, and, pursuant to Rule 1.140 and the other applicable rules of the Florida Rules of Civil Procedure, respectfully move this Honorable Court to dismiss the above-captioned cause; alternatively, for this Honorable Court to enter its Order requiring the Plaintiff herein to furnish these Defendants a more definite statement of the ultimate fact upon which the Plaintiff relies in prosecuting the above-captioned cause, and for reason therefore would show unto the Court as follows:

1. The Complaint filed herein fails to state a cause of action upon which relief can be granted in that:

a. The Complaint fails to allege sufficient ultimate fact to state a cause of action for unseaworthiness and/or negligence;

b. It affirmatively appears from the allegations of the Complaint that the U.S. General Maritime Law is inapplicable to the claims of the Plaintiff;

c. The claims of the Plaintiff are time barred by laches and/or 46 U.S.C. 763a;

2. There is insufficiency of process; insufficiency of service of process and lack of jurisdiction over the person of ROYAL NETHERLANDS STEAMSHIP COMPANY in that it affirmatively appears from the pleading that the claims of the Plaintiff do not arise out of any alleged business activity or conduct of business by said Defendant within the State of Florida; moreover, the Complaint fails to allege that the claims of the Plaintiff arose by reason of said Defendant doing business within the State of Florida.

3. There is lack of subject matter jurisdiction in that the Complaint alleges that the deceased was injured at Puerto Santo Tomas De Castilla, Guatemala; it is apparent from the return of Summons filed in this cause that the Defendants SS/HOLLANDIA and ROYAL NETHERLANDS STEAMSHIP COMPANY are of foreign citizenship; and there is no allegation that the Plaintiff or the beneficiaries for whom the Plaintiff makes claim, are Florida residents; alternatively, the Complaint fails to allege sufficient ultimate fact to posit venue for the alleged claims of the Plaintiff, within the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida.

4. As a matter of Law, there is lack of in rem jurisdiction over the vessel SS/HOLLANDIA.

5. The above-captioned cause should be dismissed under the Doctrine of Forum Non-Convenience in that:

a. The Law applicable to the occurrences not that of the United States, but of Guatemala; the accident or occurrence upon which the Plaintiff brings suit apparently occurred in Puerto Santo Tomas De Castilla, Guatemala, the location for important sources of proof, such as witnesses, medical records, etc.;

b. The forum of the Circuit Court of the Eleventh Judicial Circuit of Florida does not best suit the interests of the litigants, assuming the Plaintiff, whose residency is not alleged, to be of foreign citizenship and residency;

c. The utilization of the Eleventh Judicial Circuit in and for the State of Florida deprives the litigants of the availability of compulsory process for the attendance of unwilling witnesses; alternatively, the cost obtaining the attendance of such witnesses would be prohibitive;

d. Guatemala offers the possibility of a view of the accident scene;

e. There is no evidence that the Guatemala Courts are inaccessible to the Plaintiff herein;

f. The Plaintiff has failed to file and incorporate in the Complaint a copy of letters of administration or other documents supporting the Plaintiff's allegation that she is personal representative of the deceased, all of which in derogation of Rule 1.130 of the Florida Rules of Civil Procedure.

3. The Complaint is so vague and ambiguous that these Defendants cannot reasonably be required to frame a response thereto.

WE HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Dismiss or For a More Definite Statement was mailed this 10th day of August, 1981, to: JOSEPH C. MARTUCCI, ESQ., Attorney for Plaintiff, Suite 1002, Concord Building, 66 West Flagler Street, Miami, Florida 33130.

LANE, MITCHELL & HARRIS, P.A.  
*Attorneys for Royal Netherlands*  
*and SS/Hollandia*  
 900 Security Trust Building  
 700 Brickell Avenue  
 Miami, Florida 33131

By: GEORGE O. MITCHELL  
 George O. Mitchell



**ORDER DENYING PRE-ANSWER MOTION**

IN THE CIRCUIT COURT  
OF THE 11th JUDICIAL CIRCUIT  
IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 81-11487 CA 18

---

ELIDA QUINTO de GARCIA, et al.,

*Plaintiffs,*

—vs.—

ROYAL NETHERLANDS STEAMSHIP COMPANY, et al.,

*Defendants.*

---

THIS CAUSE came on before the Court upon the Defendant, ROYAL NETHERLANDS STEAMSHIP COMPANY's, various Motions to Dismiss the Complaint, and upon the Plaintiff's Motion for Default Judgment for the Defendant's refusal to comply with this Court's orders of May 24, 1982, and June 14, 1982, and the Court noting the Defendant's refusal to comply with this Court's orders of May 24, 1982 and June 14, 1982, having reviewed the memorandum of law submitted by both the Plaintiff and Defendant, heard argument of counsel and being fully advised in the premises it is,

ORDERED AND ADJUDGED that:

1. The Defendant's Motions to Dismiss the complaint are denied on all points.



2. The Defendant, ROYAL NETHERLANDS STEAMSHIP COMPANY, shall file an answer to the Plaintiff's complaint within 30 days of the date of this order.

DONE AND ORDERED this 1st day of November, 1982.

JUDGE SAM I. SILVER  
*Circuit Court Judge*

cc: to all counsel of record

ANSWER

IN THE CIRCUIT COURT  
OF THE 11th JUDICIAL CIRCUIT  
IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 81-11487 CA 18

---

ELIDA QUINTO de GARCIA, as Mother and Personal Representative of CARLOS ENRIQUE DOMINGUEZ QUINTO, deceased,  
*Plaintiff,*

—vs.—

ROYAL NETHERLANDS STEAMSHIP COMPANY, CAROL LINE,  
CARIBBEAN OVERSEAS LINES, S/S HOLLANDIA, and  
WEST OF ENGLAND SHIPOWNERS MUTUAL INSURANCE  
ASSOCIATION, LTD.,  
*Defendants.*

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COMES NOW the Defendant, ROYAL NETHERLANDS STEAMSHIP COMPANY (KONINKLIJKE NEDERLANDSCHE STOOMBOT MAATSCHAPPIJ, B.V.) by and through its undersigned attorneys, and for an Answer to the Complaint filed by the Plaintiff herein states as follows:

1. This Defendant denies each and every allegation of the Plaintiff's Complaint not otherwise specifically admitted herein.

2. Defendant is without sufficient knowledge and information to form a belief as to the veracity of the allegations set forth in paragraph 1 of the Complaint and therefore denies same.

3. Defendant denies the allegations set forth in paragraphs 2 and 3 of the Complaint.

4. Defendant, ROYAL NETHERLANDS STEAMSHIP COMPANY (KONINKLIJKE NEDERLANDSCHE STOOMBOAT MAATSCHAPPIJ, B.V.) admits that at all times material hereto, it was the owner of the M/S HOLLANDIA.

5. This Defendant denies the allegations set forth in paragraphs 5, 7 and 9 of the Complaint.

6. Defendant admits the vessel HOLLANDIA is/was entered with the WEST OF ENGLAND as alleged in paragraph 8, however, Defendant denies the balance of the allegations set forth in paragraph 8.

7. Defendant admits that on or about April 24, 1978, the vessel S/S HOLLANDIA was in Porto Santo Tomas de Castilla, Guatemala; this Defendant denies the balance of the allegations set forth in paragraph 10 of the Complaint, specifically that decedent CARLOS ENRIQUE DOMINGUEZ-QUINTO was a seaman aboard the subject vessel.

8. Defendant denies the allegations set forth in paragraph 11.

9. This Defendant denies the allegations set forth in paragraph 12, including sub-parts (a) through (k) thereof.

10. This Defendant denies the allegations set forth in paragraph 13 of the Complaint.

11. Defendant affirmatively avers that the claims of the Plaintiff herein are time-barred by the doctrine of laches and/or the terms and provisions of 46 U.S.C. § 763(a).

12. Defendant further affirmatively avers that the Plaintiff's Complaint fails to state a cognizable cause of action in that the U.S. General Maritime Law is inapplicable to the claims of the Plaintiff; alternatively, or in addition, Plaintiff's decedent does not enjoy any status requisite to recovery against this Defendant based upon the theories of unseaworthiness and negligence alleged in the Complaint.

13. Defendant, ROYAL NETHERLANDS STEAMSHIP COMPANY (KONINKLIJKE NEDERLANDSCHE STOOMBOAT MAATSCHAPPIJ, B.V.) further affirmatively avers there is insufficiency of process, insufficiency of service of process, and lack of jurisdiction over the person of this Defendant so as to preclude maintenance and pursuit of this action.

14. Defendant further affirmatively avers this Court lacks subject matter jurisdiction over the claims alleged in the Plaintiff's Complaint.

15. Defendant further affirmatively avers that the Plaintiff's claims are not otherwise properly cognizable in the within Court based upon the Doctrine of Forum Non Conveniens.

16. Defendant further affirmatively avers that at all times material hereto, Plaintiff's decedent CARLOS ENRIQUE DOMINGUEZ QUINTO was himself negligent and such negligence proximately caused his death and/or the injuries complained of so as to bar any recovery of Plaintiff herein; alternatively, any recovery to which Plaintiff may be entitled, which is denied, must be reduced in accordance with the principles of comparative negligence to a degree reflecting the negligence of CARLOS ENRIQUE DOMINGUEZ QUINTO.

WE HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 5th day of April, 1983, to Joseph C. Martucci, Esq., 1002 Concord Bldg., 66 West Flagler Street, Miami, Florida.

MITCHELL, HARRIS, CANNING,  
MURRAY & USICH, P.A.  
*Attorneys for Defendant*  
700 Brickell Avenue, Suite 900  
Miami, Florida 33131

---

DAVID J. HERR

**POST-TRIAL MOTION FOR JUDGMENT**

IN THE CIRCUIT COURT  
OF THE 11TH JUDICIAL CIRCUIT  
IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE No. 81-11487 (CA 18)

---

ELIDA QUINTO de GARCIA, as mother and Personal Representative of ENRIQUE DOMINGUEZ QUINTO, deceased,  
*Plaintiff,*

—vs—

ROYAL NETHERLANDS STEAMSHIP CO., etc.,  
*Defendant.*

---

MOTION FOR JUDGMENT IN ACCORDANCE WITH  
MOTION FOR DIRECTED VERDICT; OR IN THE  
ALTERNATIVE, MOTION FOR NEW TRIAL

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COMES NOW the Defendant, ROYAL NETHERLANDS STEAMSHIP COMPANY, (K.N.S.M.) by and through its undersigned attorneys, and, pursuant to Rule 1.480 (b)(c), and the other applicable rules of the Florida Rules of Civil Procedure, including Rule 1.530, respectfully moves this Honorable Court to enter Judgment in favor of the Defendant and against the Plaintiff herein, in accordance with the Defendant's Motion for Directed Verdict made during the course of the trial herein; in the alternative, the Defendant requests this Honorable Court to grant this Defendant a new trial on the merits as to

both liability and damages and for reasons therefore would show unto the Court as follows:

- 1) The verdict is contrary to law.
- 2) The verdict is contrary to the evidence.
- 3) The verdict is contrary to the law and the evidence.
- 4) The verdict is contrary to the weight of the credible evidence.
- 5) The verdict is contrary to the manifest justice of the cause and unless set aside, constitutes a miscarriage of justice.
- 6) The verdict is contrary to the manifest justice of the cause and unless set aside, constitutes a denial of due process to this Defendant.
- 7) The record in this cause does not support jurisdiction over the person of this Defendant.
- 8) The record in this cause does not support subject matter jurisdiction within this Honorable Court.
- 9) The record in this cause does not support application of the United States General Maritime Law to the claims of the Plaintiff.
- 10) The record in this cause does not support the right or legal capacity of the Plaintiff herein to advance the claims made on her own behalf or on behalf of Eswin or on the behalf of Marlon Dominguez.
- 11) The record in this cause unequivocally proves that the claims of the Plaintiff are barred by the Doctrine of Laches; further, that the Plaintiff has failed to meet her burden by demonstrating either: (a) excusable delay in the filing of the above-captioned cause; or (b) lack of prejudice to this Defendant by reason of the late filing of this cause.
- 12) The Court committed prejudicial error in permitting the jury herein to consider the claim advanced on behalf of the estate of Carlos Enrique Dominquez Quinto, upon the basis

that said claim was contrary to both the applicable law and the facts of the case as adduced at time of trial.

13) The Court committed prejudicial error in permitting the Plaintiff herein to call "rebuttal witnesses" at the conclusion of the Defendant's case, which witnesses were not disclosed on the Plaintiff's pretrial catalogue; which witnesses were not furnished the Defendant for deposition in derogation of the Court's earlier orders; which witnesses testified to new matters and/or matters which were not truly rebuttal but which were developed during the course of the Plaintiff's case in chief.

14) The verdict rendered by the jury herein is clearly excessive and not supported by the evidence adduced at trial. The evidence of pecuniary loss most favorable to the Plaintiff was the testimony of the mother, Elida Quinto, to the effect that her deceased son contributed 120 quetzales a month to the household. Any loss of earnings awarded the mother and two children must be predicated on the mother's life expectancy and the remaining period of minority of each child.

15) The Court committed prejudicial error in overruling the Defendant's Motion in Limine and permitting Dr. Melendrez to testify in the above-captioned cause; Dr. Melendrez' testimony dealt only with Marlon Dominguez' emotional response to the death of his father—an item of damages not recoverable under the General Maritime Law of the United States. Moreover, said doctor's testimony was speculative and not rendered within reasonable psychological probability.

16) The Court committed prejudicial error in permitting the jury to receive the testimony of expert witnesses Helgesen and Barber in as much as the witnesses were incompetent and their opinions were not based on proven fact. Both witnesses admitted they had never sailed on a Dutch ship; nor had either witness ever been to Puerto Santo Tomas de Castilla, and were therefore not familiar with the practices and customs followed in said port. Moreover, Captain Helgeson's testimony was an instruction upon law rather than expert testimony predicated upon the facts of the case and amounts to an expression or belief as to how the case should be decided and therefore was inadmissible.



17) It is apparent from the Court's disclosure of its inquiry of some of the jurors sitting in this cause, which inquiry was initiated with the consent of counsel following the rendition of the verdict in this cause, that the jurors did not understand the verdict form and that the verdict rendered in this case is a by-product of jury confusion and lack of understanding of the issues in this cause; more particularly it appears from the inquiry conducted by the Court that those jurors questioned did not return a verdict for the estate but, rather, added up the claims of the mother and two sons, erroneously placing the total of said three claims on the line of the verdict form reserved for an award for the estate, a separate item of damage. The net result of this error is a jury award in the amount of Two Million Dollars (\$2,000,000.00) in unreduced damages instead of One Million Dollars (\$1,000,000.00).

The jury's confusion is corroborated by the record, or perhaps better said, the lack of record, compiled during trial. The plaintiff adduced no evidence of funeral expense; no evidence of loss of accumulations nor any other pecuniary loss to decedent's estate. Indeed, counsel for the Plaintiff, in closing argument, did not even ask for damages to be awarded the estate. Finally, the Court did not deem the evidence sufficient to instruct the jury that funeral expenses or accumulations were recoverable; on the instructions given, the jury was only to consider future loss of decedent's earnings in terms of each beneficiaries' loss of support (qualified by each beneficiaries life expectancy or period of minority).

Should the Court elect to grant the Defendant's Motion for New Trial in lieu of entering Judgment in accordance with the Defendant's Motion For A Directed Verdict, such new trial must necessarily be had on *both the liability and damage issues* inasmuch as liability was hotly disputed in the instant cause, and all damage issues, necessarily interrelated with each other, must be viewed by a jury in terms of the comparative negligence of the Plaintiff's decedent. Bifurcation and/or singling out damages or individual damage issues, for new trial, would only serve to further compound the mistakes and misunderstanding of the jury, as well as to inject further prejudicial error into this cause.



18) The verdict is contrary to the law in that there was no proof adduced at the trial of this cause upon which a jury of reasonable men and women could find this Defendant liable to the Plaintiff herein. More particularly:

a) The Plaintiff failed to prove that this Defendant was negligent;

b) The Plaintiff failed to prove that negligence on the part of the Defendant was a legal cause of injury to the Plaintiff's decedent;

c) The Plaintiff failed to prove that this Defendant as a matter of law had a duty to supervise Plaintiff's decedent and/or furnish Plaintiff's decedent safety equipment;

d) The Plaintiff failed to prove that lack of supervision and/or furnishing safety equipment was a legal cause of injury and/or death to the decedent;

e) The Plaintiff failed to prove that the gangway watchman on duty at the time of the demise of Carlos Enrique Quinto Dominguez was negligent; or if negligent, that said negligence was a legal cause of injury or death to Plaintiff's decedent;

f) The Plaintiff failed to prove that this Defendant is liable for the acts of said gangway watchman;

g) The Plaintiff failed to prove that this Defendant had an obligation to supervise and/or direct said gangway watchman in his duties; and failed to prove that any lack of direction or supervision of said gangway watchman was the legal cause of injury and/or death of Plaintiff's decedent;

h) The Plaintiff failed to prove that Plaintiff's decedent was a seaman;

i) The Plaintiff failed to prove that this Defendant breached or violated any legally cognizable obligation or duty owed by this Defendant to the Plaintiff's decedent;

j) As a matter of law, this Defendant owed no responsibility to supervise the deceased or provide him with ship's equipment.

19) The Court committed prejudicial error in permitting the jury to receive evidence relative to decedent's alleged seaman status; and the Court created prejudicial error in instructing the jury on the decedent's alleged seaman status.

20) The Court committed prejudicial error in instructing the jury that if they found Plaintiff's decedent a seaman the jury was to determine if the Defendant was negligent, and if so, whether the Defendant's negligence was the legal cause of the injury and/or death of Plaintiff's decedent.

21) Plaintiff's counsel engaged in improper and prejudicial closing argument by throwing money on a set of scales on the counsel table; the effect of said improper and prejudicial behavior was to turn the courtroom into a circus; demean the judicial process; and reduced the courtroom decorum to one of "money changing in the temple".

22) The verdict rendered by the jury was the result of passion and prejudice rather than reasonable appraisal of the facts.

23) The verdict was based on patently false testimony.

24) The Court committed prejudicial error by allowing the Plaintiff's two eye-witnesses, Williams and Fajardo, to testify in narrative form, which narratives contained hearsay testimony, arguments in favor of the Plaintiff's case; and were generally not responsive to the questions posed by Plaintiff's counsel.

25) The Court committed prejudicial error in permitting both Helgesen and Barber to testify, which testimony, taken together, was cumulative and "weighted" the outcome of the case in favor of the plaintiff.

26) The Court committed prejudicial error in precluding Defendant's witness, Carlos Morales Aguilar, from testifying that Plaintiff's decedent was drunk immediately prior to the accident; this error was further compounded by permitting Plaintiff's counsel to produce "rebuttal" testimony to the effect that Plaintiff's decedent was not "drunk" on the morning of his demise.

27) The jury's verdict is patently contrary to the manifest weight of the credible evidence in that the jury found Plaintiff's decedent to be only 50% at fault for his own demise. The undisputed evidence of the case was that Plaintiff's decedent was responsible not only for the safety of his gang but also responsible for his own well being; the finding of 50% comparative negligence on the part of Plaintiff's decedent fails to accurately and sufficiently take into account the decedents own misconduct, disregard for his own well being, and failure to exercise reasonable care for his own safety.

28) The erroneous verdict of the jury reflects the failure of the Court to give certain requested charges by this Defendant, including Defendant's requested charges number 8; 16; 17 (a); and 19; the overall force and effect of which failure caused the jury not to be fully apprised of the applicable law and to believe this Defendant was the absolute insurer of the safety of Plaintiff's decedent.

WE HEREBY CERTIFY that a true and correct copy of the foregoing was hand delivered this 20th day of January, 1984.

MITCHELL, HARRIS, CANNING, MURRAY  
and USICH, P.A.  
700 Brickell Avenue, Suite 900  
Miami, Florida 33131

By: GEORGE O. MITCHELL  
George O. Mitchell

**ORDER DENYING POST-TRIAL MOTION**

**IN THE CIRCUIT COURT  
OF THE 11TH JUDICIAL CIRCUIT  
IN AND FOR DADE COUNTY, FLORIDA**

**GENERAL JURISDICTION DIVISION**

**CASE No: 81-11487 (18)**

---

ELIDA QUINTO de GARCIA, as Mother and Personal Representa-  
tive of CARLOS ENRIQUE DOMINGUEZ QUINTO, deceased,  
*Plaintiff,*

—vs.—

ROYAL NETHERLANDS STEAMSHIP COMPANY, et al.,  
*Defendant.*

---

ORDER ON POST-TRIAL MOTIONS: 1) DENYING DEFENDANT'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT; 2) DENYING DEFENDANT'S MOTION FOR NEW TRIAL ON LIABILITY; 3) GRANTING DEFENDANT'S MOTION FOR NEW TRIAL ON THE ISSUE OF DAMAGES TO THE ESTATE OF CARLOS ENRIQUE DOMINGUEZ QUINTO AND DENYING A NEW TRIAL AS TO ALL OTHER DAMAGE ISSUES; 4) DENYING RELIEF TO THE DEFENDANT ON THE AFFIRMATIVE DEFENSE OF LACHES

THE COURT, upon consideration of the motions for post-trial relief filed by the defendant, ROYAL NETHERLANDS STEAMSHIP COMPANY, after a review of the memorandum of law in support thereof, having reviewed plaintiff's written memorandum in opposition thereto, having presided over the jury trial herein and being otherwise fully advised in the premises, does hereby

## ORDER AND ADJUDGE:

1. The defendant's Motion for Judgment Notwithstanding the Verdict be and the same is hereby denied;

2. The defendant's Motion for New Trial on the Issue of Liability be and the same is hereby denied;

3. The defendant's Motion for New Trial on the Issue of Damages be and the same is hereby denied except as to that portion of the jury verdict which awarded damages to the Estate of CARLOS ENRIQUE DOMINGUEZ QUINTO in an amount of One Million Dollars (\$1,000,000.00). To that claim, and to that claim only, a new trial on the issue of damages is awarded:

a. The verdict returned by the jury in an amount of \$1,000,000.00 is against the manifest weight of the evidence and was clearly a result of mistake on the jury's part. This Court notes as significant the assertion by plaintiff's counsel (as founded in plaintiff's memorandum of law filed post-trial) that the damages sustained by the estate *do not* support jury verdict for \$1,000,000.00.

b. This Court, with the permission and consent of counsel for both parties, contacted members of the jury panel. This Court's inquiry established that the award in favor of the estate's claim was erroneously computed and that it was not the intent of the jury to award \$1,000,000.00 to the estate.

c. That this Court is convinced, after questioning of the particular jurors, that the error related solely to mathematical computation and that the jury followed, in all other respects, this Court's instructions with particular emphasis upon Florida Standard Jury Instruction 2.4, directing the jury to consider *separately* "each claim" as it affects that party.

d. That the jury award in favor of the estate of the decedent in the amount of \$1,000,000.00 be and the same is hereby vacated and a new trial solely related to the claim of the estate is granted. See: *SOSA v. KNIGHT-RIDDER NEWSPAPERS, INC.*,

435 So. 2d 821 (Fla. 1983); WACKENHUT CORPORATION v. CANTY, 359 So. 2d 430 (Fla. 1978); and CLOUD v. FALLIS, 110 So. 2d 669 (Fla. 1959).

4. The defendant's motion for judgment in its favor on the basis that the equitable doctrine of laches has barred the plaintiff's claim be and the same is hereby denied. Assuming that the doctrine of laches requires this Court, under the facts and circumstances herein remaining, to resolve any factual dispute and/or apply to the undisputed facts a balancing of the equities, this Court finds, as a matter of fact, that no prejudice obtained to the defendant as a result of the alleged delay and, under the circumstances, the alleged late filing of this action was excusable. The Court finds against the defendant on the affirmative defense of laches.

5. The instant cause may be noticed for trial on the limited issue of damages to the estate upon motion of any interested party. This Court's final judgment dated January 25, 1984, in favor of the estate, be and the same is hereby vacated.

DONE AND ORDERED in Chambers this 23rd day of March, 1984, at Miami, Dade County, Florida.

Original Signed By  
Richard S. Fuller

---

Richard S. Fuller  
*Circuit Judge*

cc: Huggett & Martucci  
Horton, Perse & Ginsberg  
Mitchell, Harris, Canning,  
Murray & Usich, P.A.

**NOTICE OF APPEAL**

**IN THE CIRCUIT COURT  
OF THE 11TH JUDICIAL CIRCUIT  
IN AND FOR DADE COUNTY, FLORIDA**

**GENERAL JURISDICTION DIVISION**

**CASE No: 81-11487 (18)**

---

**ELIDA QUINTO de GARCIA, as Mother and Personal Representa-  
tive of CARLOS ENRIQUE DOMINGUEZ QUINTO, Deceased,**  
*Plaintiff,*

**—vs.—**

**ROYAL NETHERLANDS STEAMSHIP COMPANY, et al.,**  
*Defendant.*

---

NOTICE IS GIVEN that ROYAL NETHERLANDS STEAMSHIP COMPANY, Defendant, Appellant, appeals to the District Court of Appeal of Florida, Third District the orders of this Court rendered January 25, 1984 and March 23, 1984; the nature of the Orders is, respectively, a Final Judgment in favor of Plaintiffs and against Defendant and an Order on Post Trial Motions denying Defendant's Motion for Judgment Notwithstanding the Verdict, Motion for New Trial on Liability, Granting to Plaintiff a New Trial on the Issue of Damages to the Estate of one CARLOS ENRIQUE DOMINGUEZ QUINTO and Denying a New Trial as to All Other Damage Issues and Denying Relief to the Defendant on its Affirmative Defense of Laches.

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to: JOSEPH C. MARTUCCI, ESQ., Huggett & Martucci, 1002 Concord Building, 66 West Flagler Street, Miami, Florida 33130 on this 17 day of April, 1984.

MITCHELL, HARRIS, CANNING,  
MURRAY & USICH, P.A.  
2650 Biscayne Boulevard  
Miami, Florida 33137  
Tel: (305) 358-1405

BY: C. ROBERT MURRAY, JR.  
C. Robert Murray, Jr.



**ORDER DENYING DISCRETIONARY REVIEW**

SUPREME COURT OF FLORIDA

DISTRICT COURT OF APPEAL,  
THIRD DISTRICT NO. 84-835

THURSDAY, SEPTEMBER 25, 1986

CASE NO. 68,944

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ROYAL NETHERLANDS STEAMSHIP COMPANY,  
*Petitioner,*

—vs.—

ELIDA QUINTO de GARCIA,  
*Respondent.*

---

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution (1980), and the Court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d).

Petitioner's Motion for Leave to Reply to Respondent's Brief in Opposition to Jurisdiction treated as a Motion to Strike is hereby denied.

MCDONALD, C.J., ADKINS, BOYD, SHAW and BARKETT, J.J.,  
concur

cc: Hon. Louis J. Spallone, Clerk  
Hon. Richard P. Brinker, Clerk  
Hon. Richard S. Fuller, Judge  
George O. Mitchell, Esquire  
Arnold R. Ginsberg, Esquire

A True Copy

TEST:

Sid J. White  
Clerk Supreme Court

By: BETSY HILL  
Deputy Clerk

[SEAL]

